IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 10-09-2005

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice AR. RAMALINGAM

Writ Petition Nos. 19387 of 1998, 27173, 27174 of 2003,

21663, 21664 of 2004 and 5303 of 2005

and W.P.M.P.Nos. 3875 of 2004, 4007 and 5859 of 2005.

W.P.No. 19387/1998

1. S. Jacob,
2. S. Manoharan,
3. Syed Humayun,
4. W. Sirajunnisha. .. Petitioners.

Vs.

1. State of Tamil Nadu,
   represented by its Secretary to
   Government, Revenue Department,
   Chennai-600 009.

2. Special Commissioner and
   Commissioner for Revenue Administration,
   Chepauk, Chennai-5.

3. S. Narayanasamy.
4. S. Govindan,
5. S. Maruthanayagam,
6. K.S. Paramasivam,
7. S. Ganapathy Sivasubramaniam,
8. S. Gopal,
9. S. Muthusamy,
10. T.S. Mohan,
11. G. Syed Kudhradulla,
12. A.K. Neelaram,
13. P.G. Shanmugam,
14. V. Erulappan,
15. G. Boopalan,
16. K. Ponnusamy,

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17. K. Murugesan,
18. K. Ramasamy,
19. T. Parivel,
20. A. Dhandapani,
21. S. Sethuraman,
22. M. Ali Akbar,
23. T. Shanmugiah,
24. S. Swamythevar,
25. C. Ramu,
26. A. Mani,
27. R. Sundaram,
28. N. Feroz Nawazhkhan,
29. G. Ramalingam,
30. S. Dharmarajan,
31. Registrar,
    Tamil Nadu Administrative Tribunal,
    Chennai-104. ...Respondents

Writ Petition (W.P.No.19387/98) is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records pertaining to the order passed by the Tamil Nadu Administrative Tribunal in R.A.No. 52/98 in O.A.No. 2113/95 dated 6-8-98 confirming the order in O.A.No. 2113/95 dated 26-2-1997 and quash the same.

W.P.27173/2003

1.The Secretary to Govt.of Tamil Nadu,
Revenue Department,
Fort ST. George,
Chennai-9

2.The Special Commissioner and Commissioner of Revenue Administration,
Chepauk,
Chennai-5 ..Petitioners

-Vs-

1.S.Narayanasamy

2.S.Govindan

3.S.Maruthanayagam

4.K.S.Paramasivam

5.S.Ganapathy Sivasubramaniam

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6.S.Gopal

7.S.Muthuswamy

8.T.S.Mohan

9.S.Syed Kudhradulla

10.A.K.Nilaram

11.P.G.Shanmugam

12.N.Irulappan

13.G.Boopalan

14.K.Ponnusamy

15.K.Murugesan

16.K.Ramasamy

17.T.Parivel

18.A.Dhandapani

19.S.Sethuraman

20.Ali Akbar

21.T.Shanmugaiah

22.S.Swamy Thevar

23.C.Ramu

24.A. Mani

25.R.Sundaram

26.N.Ferox Nawaz Khan

27.G.Ramalingam

28.S.Dharmarajan

29.S.Jacob

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30.S.Manoharan

31.Syed Humayun

32.W.Sirajunisa

33.M.Rathinasamy

34.K.K.Anbalagan

35.N.S.Kalimuthu

36.V.Viswanathan

37.P.Pandiyarajan

38.S.Paravathavarthini

39.C.Munisamy

(R3 to R39 impleaded as per
order of this Court dt. 9.2.04
in W.P.M.P.47633/03)

40.B.Muthuramalingam

41.R.Kadhirvelu

42.P.Manoharan

(R40 to R42 impleaded as
per order of this Court dt. 7.7.04
in W.P.M.P.20003/04) ..Respondents

W.P.No.27174 of 2003

1.The Commissioner and Secretary,
to Govt. of Tamil Nadu,
Revenue Department,
Fort St. George
Chennai-9

2.The Principal Commissioner and
Commissioner of Revenue Administration,
Chepauk,
Chennai-5 ..Petitioners

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-Vs-

1.S.Kannan

2.C.Kaliaperumal

3.V.S.Seshadri

4. S.Md.Ismail
5. D.Sreedharan
6. V.Ramu
7. P.Sundara Raj
8. A.Mani
9. R.Sundaram.
10.N.Feroz Nawaz Khan
11.G.Ramalingam.
12.S.Dharmarajan
13.S.Gunasekaran
14.S.Viswanathan
15.V.Somasundaram.
16.T.Shanmugaiah
17.S.Swami Thevar
18.P.Selvaraj
19.K.Kalaiselvan
20.S.Sethuraman
21.S.Manoharan
22.S.Elangovan
23.B.Muthuramalingam
24.R.Kadhirvelu
25.P.Manoharan

Respondents 23 to 25 impleaded
as per order of this Court
dated 7.7.2004 in WPMP.20267/2004

Prayer in WP.No.27173/2003 and WP.No.27174/2003:

Writ Petitions WP.Nos.27173/2003 and 27174/2003 are filed under Article 226 of the Constitution of India to issue writ of certiorari to call for the proceedings of the Tamilnadu Administrative Tribunal dated 26.2.1999 made in O.A.No.2113 of 1995 and O.A.No.5710 of 1992 respectively and quash the same.

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W.P.No.21663/2004 and WP.No.21664/2004:

1. M.Prabakaran
2. P.K.Periyathambi
3. G.Sampath ..Petitioners in both WP.No.21663/2004 and 21664/2004

Vs.

1. The Commissioner and Secretary to Government of Tamilnadu, Revenue Department, Fort St. George, Chennai-9.

2. The Principal Commissioner and Commissioner of Revenue Administration Chepauk, Chennai-9.

3. The Collector, Collectorate, Namakkal, Namakkal District. ..Respondents in both WP.Nos.21663/2004 and 21664/2004

4. S.Palani
5. S.Kadhirvelu
6. L.Kaliannan ..Respondents in WP.No.21664/2004

Prayer in WPs.21663/04 and 21664/2004

Writ Petitions WP 21663/04 and 21664/04 are filed under Article 226 of the constitution of India to issue writ of certiorarified Mandamus to call for the records pertaining to the Order of the third respondent bearing No.Na.Ka.No.9375/2004/A3 and No.Na.Ka 9375/2004/A2 dated 30.6.2004 and quash the same and direct the third respondent to restore the petitioner's seniority as Tahsildars.

WP No.5303 of 2005

1. T.Mohan Das
2. M.Mariadoss
3. R.Balasubramaniam
4. K.Chandra Sekaran
5. P.Subramanian .. Petitioner

-Vs-

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1. The State of Tamilnadu rep.
By its Secretary,
Revenue Department,
Fort St.George,
Chennai-9

2. The Special Commissioner and
Commissioner for Revenue Administration
Chepauk, Chennai-5

3. The District collector of Coimbatore
at Coimbatore

4. R.Kadirvelu

5. P.Selvaraj

6. P.Manoharan

7. B.Muthuramalingam .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue writ of Mandamus forbearing the respondents 1 to 3 from in any manner promoting any person, more particularly the respondents 4 to 7 without first considering the claim of the petitioner who are admitted seniors in the Assistant Cadre, to the post of Tahsildar under the Control of 3rd respondent (Revenu Unit)

Mr. C. Selvaraju, Senior counsel for
Mr. S. Kamadevan:- For Petitioner in W.P.
No. 19387/98 and for Respondents 29 to 32 in
W.P.No. 27173/2003.

Mr. R. Muthukumaraswamy, Addl. Advocate General,
assisted by Mr. S. Sirinivasan, Govt., Advocate:
For Petitioner in W.P.Nos. 27173, 27174/2003 and
for Respondents in W.P.No.21663/2004 and for
Respondents 1 to 3 in W.P.No. 21664/2004 and
in W.P.No. 5303/2005.

Mrs. G. Devi:- For petitioner in W.P.Nos. 21663,
21664/2004 and for Respondents 12, 20, 26, 27 in
W.P.No. 27173/2003 and for Respondents 9,13,18,22
in W.P.No. 27174/2003.

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Mr. L. Chandrakumar:- For Petitioner in W.P.No. 5303/2005.

Mr. S. Rajarathinam:- For R-24 in W.P.27173/2003

Mr. R. Singaravelan:- For R-33 to R-39 in W.P.No. 27173/2003, and for R-4 to R-6 in W.P.No. 21664/2004.

Mr. V.K. Muthusamy, senior counsel for Mr. K. Kalyanasundaram:- For R-40 to 42 in W.P.No. 27173/2003; R-23 to 25 in W.P.No.27174/2003; and R-7 in W.P.No. 5303/2005.

No appearance for Respondents 1 to 30 in W.P.No. 19387/98; for Respondents 1 to 11, 13 to 19, 21 to 23 and 25 in W.P.No. 27173/2003; for Respondents 1 to 7, 10 to 12, 14 to 17, 19 to 21 in W.P.No. 27174/2003; and for Respondents 3 to 6 in W.P.No. 5303/2005.

COMMON ORDER

(Order of the Court was made by P. Sathasivam, J.,)

Since the issues in these writ petitions are inter-linked, they are being disposed of by the following Common Order.

2. Direct recruit Assistants in Madras City Revenue Establishment have preferred O.A.No. 204/91 before the Tamil Nadu Administrative Tribunal, Chennai-104 praying for a direction to the Government-Revenue Department, the Special Commissioner and Commissioner of Revenue Administration and the Collector of Madras to consider and promote them to the cadre of Deputy Tahsildars from the date on which they completed five years of service as direct recruit Assistants and placing them above 1983 panel of Deputy Tahsildars and giving them service benefits.

3. The applicants in O.A.No. 5710/1992 on the file of the same Tribunal, who joined in Revenue Department as Junior Assistants and were later promoted as Assistants, have prayed for quashing G.O.Ms.No. 884, Revenue Department, dated 12-8-1992 ("Government Order of 1992" in short) and the consequential G.O.Ms.No. 133, Revenue Department dated 7-2-1995 ("Government Order of 1995" in short). In the Government Order of 1992, it was stated inter alia that qualified direct recruit Assistants in the District Revenue Establishment could be considered for inclusion in Deputy Tahsildar list after completion of five years of service and placed

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in the top of the list, below the carried over vacancies, and above promotee Assistants and the Special Commissioner and Commissioner of Revenue Administration was directed to send necessary draft amendment to the Special Rules for Tamil Nadu Revenue Subordinate Services. In the G.O. of 1995 necessary amendments were made to Tamil Nadu Revenue Subordinate Service Rules.

4. The applicants in O.A.No. 2113/1995, who joined the Revenue Department as Junior Assistants and were later promoted as Assistants/Deputy Tahsildars, have prayed for quashing the G.O. of the year 1992 and the G.O. of 1995, and directing the respondents to promote them as per inter se seniority between the promotee Assistants and direct recruit Assistants.

5. By the impugned common order dated 28-02-1997, the Tamil Nadu Administrative Tribunal, after finding that the amendments made to Annexure-III (ii) by the Government Order of 1995 which provide for preferential treatment for direct recruit Assistants for promotion as Deputy Tahsildars suffer from the infirmity that these are repugnant to Rule 11 in Annexure-IX of Tamil Nadu Ministerial Service Rules and Rule 5 (f) of Tamil Nadu Revenue Subordinate Service Rules and deprive promoted Assistants of their vested rights, allowed O.A.Nos. 5710/92 and 2113/95 and set aside G.O.Ms.No. 884, Revenue Department dated 12-8-1992 and G.O.Ms.No. 133, Revenue Department, dated 7-2-1995; and dismissed O.A.No. 204/91. Questioning the said order, the unsuccessful parties including the State Government preferred Writ Petition Nos. 19387/1998, 27173/2003, 27174/2003, 21663 and 21664/2004.

6. One T. Mohan Das and four others have preferred W.P.No. 5303/2005 praying for a Writ of Mandamus, forbearing respondents 1 to 3 in any manner promoting any person, more particularly respondents 4 to 7, without first considering the claim of the petitioners who are admitted seniors in the Assistant cadre, to the post of Tahsildar, under the control of third respondent (Revenue Unit).

7. The post of Assistant in the Revenue Department is governed by the Tamil Nadu Ministerial Service Rules. The said post is filled by two sources, one by direct recruitment and other by promotion from Junior Assistants. The post of Deputy Tahsildar is governed by Tamil Nadu Revenue Subordinate Service Rules as per which the said post of Deputy Tahsildar is filled by recruitment by transfer from the post of Assistants in Tamil Nadu Ministerial Service, Office of the Commissioner of Revenue Administration (CRA), Office of the Commissioner of Land Administration, Secretariat etc. By G.O.Ms.No. 884 Revenue Department dated 12-8-1992, orders were issued to give preference to the directly recruited Assistants in the Ministerial Services by placing the selected Assistants on the

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top of the list for the appointment as Deputy Tahsildar, which is borne by Tamil Nadu Revenue Subordinate Service Rules. G.O.Ms.No. 133 Revenue Department dated 07-02-1995 was issued amending the Special Rules for Tamil Nadu Revenue Subordinate Service Rules to give effect to the decision of the Government in G.O.Ms.No. 884 Revenue Department dated 12-08-1992. The promotee Assistants filed Original Applications as referred above before the Administrative Tribunal to quash the said orders. The Tribunal has allowed their Original Applications and quashed the above said Government Orders as vitiated on the following three grounds:

(a) It is inconsistent with Rule 11 of Tamil Nadu Ministerial Service Rules.

(b) It is inconsistent with Rule 5 (f) of the Tamil Nadu Revenue Subordinate Service Rules.

(c) It is bad for giving retrospective effect with effect from 1978 as it affects vested right.

Aggrieved by the said order of the Tribunal, initially they filed Special Leave Petitions before the Supreme Court, which initially entertained the same and passed interim orders, subsequently, directed the State to go before the High Court which necessitated them to file W.P.Nos. 27173 and 27174 of 2003.

8. The particulars furnished by the Government and the contesting parties would show the following historical facts of the case. According to the Government, from 1937 (if not earlier), the post of Probationary Revenue Inspector was a category in the Tamil Nadu Ministerial Services Rules. The said Rules provided for the qualifications, method of recruitment, training etc., in respect of the above post. Persons selected by direct recruitment as Probationary Revenue Inspectors were to undergo a training and given postings in various positions in terms of the said Rules. The Tamil Nadu Revenue Subordinate Service Rules, then in force, provided for two categories of posts viz., Tahsildars and Deputy Tahsildars. The post of Deputy Tahsildar was to be filled by transfer from various categories of posts including the probationary Revenue Inspectors. So far as the category of Probationary Revenue Inspector is concerned, once such a person completes the training and is found fit for selection as Deputy Tahsildar, the Rules provided that the selected Probationary Revenue Inspector will be placed on top of the list of Deputy Tahsildars both in the City and the District list.

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Thus, preferential treatment was given for several decades in favour of the Probationary Revenue Inspectors, which was a category in the Ministerial Service.

9. In 1964, the post of probationary Revenue Inspector was re-designated as Upper Division Clerk and later came to be re-designated as probationary Assistants. The qualification, method of selection, training etc., for these posts were the same as that of Probationary Revenue Inspectors. However, the Revenue Subordinate Service Rules which dealt with the post of Probationary Revenue Inspectors, was not correspondingly amended so as to substitute the post of Upper Division Clerk or Probationary Assistants. It is in these circumstances that there were certain disputes in certain cases result in the Government reviewing the matter in 1978 and taking a decision to make appropriate amendments. Although such a decision was taken by the Government in the year 1978, it took a long time for appropriate orders to be issued which ultimately culminated in G.O.Ms.No.884 Revenue Department dated 12-8-1992 followed by the statutory amendment in G.O.Ms.No. 133, Revenue Department dated 07-02-1995 resulting in preferential treatment in favour of the Probationary Assistants, who were earlier called as Probationary Revenue Inspectors. The comparative statements in respect of Selection category of posts (Rule 5) of Tamil Nadu Ministerial Service Rules and the Revenue Subordinate Service Rules in respect of Category I and II (Rule 5 (f) are extracted hereunder:

TAMIL NADU MINISTERIAL SERVICE RULES
Selection Category of Posts (Rule 5)

By Promotion	Promotion with reference to Rule 10 & 11 38 (b) (ii)

Promotee Assistants	Directly Recruited Assistants
By Promotion	1. Special Rule 38(b)(ii) 2. At the maximum 1/3 of Total Assistant vacancy as per Rule 9
Junior Assistant	3. Selection by TNPSC under combined Subordinate

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| Services-Minimum degree standard.

TNPSC under Group IV SSLC.	Peon and Record Clerk Etc.	Compa-ssionate ground	VAOs	Typist

TAMIL NADU REVENUE SUBORDINATE SERVICE RULES

TAHSILDAR [Category 1 5(f)]

| By Promotion (Seniority referred in 5(f) applies)

DEPUTY TAHSILDAR (Category II 5(f)

| Recruitment by Transfer (Seniority referred in 5(f) not applies)

Promotee Assistant & Selection Category Posts	Direct Assistant and Selection Category Posts	Assistant in O/o CRA	Assistant in O/o Land Reforms	Assistant in O/o CLA	Assistant in Secretariat	Assistant O/o CCS

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10. As discussed earlier, the grounds referred to in the order of the Tribunal is that the amendment effected in the Tamil Nadu Revenue Subordinate Service Rules as inconsistent with Rule 11 of the Tamil Nadu Ministerial Service Rules and Rule 5 (f) of the Tamil Nadu Revenue Subordinate Service Rules. Before considering the said question, let us consider the relevant rules. Rules 9, 10 and 11 of the Tamil Nadu Revenue Subordinate Service Rules may be relevant which are extracted below:

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Rule 9. The inter-se seniority of the directly recruited Assistants in the districts shall be fixed in the following cyclical order irrespective of the date of their joining duty.

(a)	First two vacancies ..	Persons appointed by promotion
(b)	Third vacancy ..	Persons appointed by direct recruitment.
(c)	Fourth and fifth vacancies ..	Persons appointed by promotion
(d)	Sixth vacancy ..	Persons appointed by direct recruitment.

Rule 10

Consistent with his seniority, a directly recruited Assistant shall be eligible for promotion to any selection category posts, provided he has put in one year service in the Collector's office after he has completed the period of training as Firka Revenue Inspector and has also passed the tests, prescribed.

Rule 11.

For every such person, there shall be reserved a substantive vacancy arising in the permanent cadre of the category of Assistants in the Revenue department in the District concerned after his appointment. His appointment to a substantive vacancy shall not however, confer on him any preferential claims to promotion."

Rule 5 (f) of the Tamil Nadu Revenue Subordinate Service Rules provides for

"....The selecting authority to arrange the names of the persons selected by it for appointment as Tahsildar or Deputy Tahsildar, as the case may be, in the order of the preference decided by it, which shall be based on merits, ability and seniority".

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Rule 5 (f) of Tamil Nadu Revenue Subordinate Service Rules specifies the method of recruitment by transfer to the post of Deputy Tahsildar and the promotion to the post of Tahsildar. Tahsildar, which is included in category 1, is a promotional post. Here, undoubtedly the principle of seniority is applied. But the second category post viz., Deputy Tahsildar is recruited by the method of transfer from almost seven sources namely,

a. Promotee Assistants.
b. Directly recruited Assistants.
c. Assistant in the Office of the Commissioner of Revenue Administration.
d. Assistant in the Office of the Land Reforms.
e. Assistant in the Office of the Land Administration.
f. Assistant in the Secretariat.
g. Assistant in the Office of the Civil Supplies.

11. Mr. R. Muthukumaraswamy, learned Additional Advocate General appearing for the State, submitted that in view of the different sources of recruitment, it cannot be said that the principle of seniority could be made applicable to the recruitment of Deputy Tahsildar. The principles of seniority is applicable within the category and post. The particulars furnished would show that among the selected candidates, the direct recruitment Assistants, who are found fit to be appointed as Deputy Tahsildar, will be placed on top of the list. According to him, this provision is, therefore, in no way opposed to Rule 11 of the Tamil Nadu Ministerial Service Rules or Rule 5 (f) of the Tamil Nadu Revenue Subordinate Service Rules.

12. It is not in dispute that the minimum educational qualification for the directly recruited Assistants through Tamil Nadu Public Service Commission in Group II Service is Graduation. It is the grievance of the directly recruited Assistants that direct recruitments are made once in blue moon and whereas in the department promotions are given immediately now and then as Assistant from the cadre of Junior Assistant. As a result of the same, the directly recruits on merit selection with degree were unable to get further promotion and number of people was not even able to reach the Tahsildar post till their retirement. As discussed earlier, originally there was no post of direct recruitment of Assistant with degree, whereas Probationary Revenue

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Inspectors were in vogue at least from 1911. Then onwards there was one line of promotee Assistant from the cadre of Junior Assistants and there was no direct recruitment of Assistants and they will be further promoted as Deputy Tahsildar. It is the grievance of the directly recruited Assistants that in the ladder of promotion, there was no chance of inducting a person on merit basis of graduation obviously for the reason that in those days graduates may not be available. Later on, on seeing the availability of graduates, they introduced a post called Probationary Revenue Inspector. The Probationary Revenue Inspectors were also, considering their graduation and other qualification, made eligible to become Deputy Tahsildars on completion of three years. Even while making them to become eligible as Deputy Tahsildar after merit selection, the directly recruited Probationary Revenue Inspectors will be placed first in the list. Even the said provision was deleted in 1977. It is further seen that by replacing the post of Probationary Revenue Inspector, the then Upper Division Clerk, presently Assistant posts through direct recruitment was introduced in G.O.Ms.No. 90 Revenue Department dated 8-01-1962 and rules were amended in G.O.Ms.No. 2813 Revenue dated 01-12-1964 and the post of Probationary Revenue Inspector came to be deleted in 1977. It is also the grievance of the directly recruited Assistants that there was no promotional opportunity for them. It is also their claim that when hundreds of vacancies of Assistants are filled up by promotion, one or two vacancies alone will be filled up by direct recruitment, which resulted in, rule 9 inoperative. Mr. C. Selvaraju, learned senior counsel, has also brought to our notice that out of 6000 Assistants throughout the State as on date in various Districts, only about 300 directly recruited Assistants are working. Based on the representation sent to the Board of Revenue and the Government, the Government, after accepting the proposal of the Board of Revenue, ultimately, issued order in G.O.Ms.No. 884, Revenue Department, dated 12-8-1992.

13. On going through the amendment issued in G.O.Ms.No. 133, Revenue Department, dated 7-2-1995 with effect from 4-12-1978 the date on which proposal draft amendment was sought by the Government from the Board of Revenue, we are of the view that the Tribunal without considering the scope of challenge to the Rule, struck down the amendment and allowed the Original Applications on the ground that the amendment is against Rule 11 of Tamil Nadu Ministerial Service Rules and Rule 5 (f) of Tamil Nadu Revenue Subordinate Service Rules. It is not in dispute that the impugned amendment has been issued to the Revenue Subordinate Service Rules. The Tamil Nadu Ministerial Service Rules are different from Subordinate Service Rules. There cannot be any comparison between the Ministerial posts and subordinate service officer posts. Similarly, there is no repugnance of Rule 11 of Tamil Nadu Ministerial Service Rules. As rightly pointed out, a reading of the

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above Rule makes it clear that it curtails promotion in the Ministerial ladder. Recruitment by transfer is appointment to other service Officers cadre/Deputy Tahsildar on the basis of merit, ability and seniority. Select list has to be prepared not only from the members of the Ministerial Service i.e., Assistants, but also from the members of Tamil Nadu Secretariat Service, Board of Revenue, Commissioner of Civil Supplies, Director of Survey and Settlement, Director of Rehabilitation, Commissioner of Agricultural Income Tax and Director of Urban Land Ceiling and Tax. As rightly pointed out, it is not as if seniority will be marching over. After merit selection, among the group of Assistants, selected from Revenue Department, preference will be given to the graduates i.e., directly recruited Assistants. We are satisfied that the impugned amendment is only placement at the top of the list among the Assistants selected on merit basis in the Revenue Department. A person in the zone of consideration will not be placed at the top merely because he is directly recruited Assistant and he must march over on merit and on getting the name included in the list, he will be placed as No.1. Therefore, there is no repugnance to rule 5 (f) of Revenue Subordinate Service Rules.

14. Coming to the challenge relating to Article 14 of the Constitution of India, there is no classification nor case because the contesting parties are not coming in the same category. They are non graduate promotee Assistants and others are all graduates directly recruited Assistants. The Courts have repeatedly held that there can be preferential treatment to one group and it is sufficient if there is any basis for such preferential treatment. In T.R. KOTHANDARAMAN v. TAMIL NADU WATER SUPPLY AND DRAINAGE BD, reported in 1994 AIR SCW 4367, the Supreme Court has held as follows: (para 16 and 22)

> "16. From what has been stated above, the following legal propositions emerge regarding educational qualification being a basis of classification relating to promotion in public service:-
>
> (1) Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances of each case.
>
> (2) Higher educational qualification can be the basis not only for barring promotion, but also for restricting the scope of promotion.
>
> (3) Restriction placed cannot however go to the extent of seriously jeopardizing the chances of

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promotion. To decide this, the extent of restriction shall have also to be looked into to ascertain whether it is reasonable. Reasons for this are being indicated later.

22.....higher educational qualification has relevance in so far as the holding of higher promotional post is concerned, in view of the nature of the functions and duties attached to that post. The classification has, therefore, nexus with the object to be achieved. This apart, History also supports the differentiation sought to be made by the rule in question. We, therefore, uphold the classification as valid."

15. In ROOP CHAND v. DELHI DEVELOPMENT AUTHORITY, reported in AIR 1989 Supreme Court 307, while considering higher educational qualification which is relevant for fixation of higher pay scales, Their Lordships have referred to the following observation given by the Supreme Court in the case of STATE OF JAMMU AND KASHMIR v. TRILOKI NATH KHOSA [AIR 1974 SC 1]: (para 9)

"9.....Classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstances and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification.

Though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications the rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate Articles 14 and 16 of the Constitution and must be upheld."

16. In STATE OF JAMMU AND KASHMIR v. TRILOKI NATH KHOSA [AIR 1974 SC 1], the Constitution Bench of the Supreme Court has held thus: (para 55)

"55. We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that

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graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate Articles 14 and 16 of the Constitution and must be upheld."

17. In CHANDRAVATHI P.K. v. C.K. SAJI, reported in 2004 AIR SCW 1178, the Court held in para 41:

"41. It is well settled that classification on the basis of educational qualification is a reasonable one and satisfies the doctrine of equality as adumbrated in Article 14 of the Constitution of India."

18. In A.S. PARMAR v. STATE OF HARYANA, reported in AIR 1984 Supreme Court 643, it was held: (para 18)

"18. It is indisputable that if the Government wishes to appoint only holders of degrees to the Class I Service, it may do so by promulgating appropriate Rules. That power is beyond question and it is not, therefore, necessary to refer to those decisions which lay down that classification on the basis of educational qualifications of officers belonging to a cadre for purposes of promotion to a higher cadre is permissible...."

19. In the instant cases, though both parties are not equal because the applicants are non graduates and directly recruited Assistants are graduates, preferential treatment is given not by way of automatic promotion but by merit selection on the basis of graduation. As rightly pointed out, the old position of preference to the Probationary Revenue Inspector has been now given to the directly recruited Assistants because the latter are substitute to the Probationary Revenue Inspectors.

20. It is relevant to note that the State being an employer is entitled to fix separate qualification, guidelines and preference in the matter of employment in exercise of its Rule making power under Article 309 of the Constitution of India. While considering fixation of separate quota of promotion for the degree-holders, diploma-holders and certificate-holders, the Supreme Court in 2004 AIR SCW 1178 (cited supra) has held as follows: (para 43)

"43. The State as an employer is entitled to fix separate quota of promotion for the degree-holders, diploma-holders and certificate-holders separately in exercise of its rule-making power under Article 309 of the Constitution of India. Such a rule is not unconstitutional. The State may, therefore, in

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our opinion, cannot be said to have acted arbitrarily by giving an option to such diploma-holders who acquired a higher qualification so as to enable them to either opt for promotion in the category of degree-holder or diploma-holder...."

21. In R. PRABHA DEVI v. GOVERNMENT OF INDIA, reported in AIR 1988 Supreme Court 902, the Supreme Court has ruled that the rule making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. It was further held that when such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. It is clear that the appropriate Rule making Authority is the best Judge in this regard. The Rule making Authority is certainly competent to amend the Rule and extend the period from 6 years to 8 years so as to make the direct recruits more experienced and suitable for the higher post. That is a matter for the Rule making Authority; the Tribunal cannot sit in judgment over the opinion of the Rule making Authority. No Court or Tribunal can substitute its own view in a matter such as this. Such a Rule framed by a competent Authority cannot be struck down unless it is shown to be violative of any Fundamental Right guaranteed to a citizen under the Constitution.

22. Further, the State is free from formulating a policy which prescribes as an essential part of the conditions for the very eligibility that the candidate must have a particular qualification plus a stipulated quantum of service-experience. In matters of policy, unless the provision is shown to be arbitrary, capricious, or to bring about grossly unfair results, judicial policy should be one of judicial-restraint. It is worth-while to refer the occasion made by the Supreme Court in AIR 1989 Supreme Court 307 (cited supra) that the prescriptions may be somewhat cumbersome or produce some hardship in their application in some individual cases, but they cannot be struck down as unreasonable, capricious or arbitrary. In all these cases, we are satisfied that there is neither arbitrariness nor any infringement of Article 14 of the Constitution. Arbitrariness is favouring unilaterally one group without any basis detrimental to the interest of the administration. None of the essential ingredient is attracted. As rightly pointed out, graduate cannot be said equal to that of un-equal. All the graduates are put one group, written test conducted, and oral interview, selections are made on the merit basis by the Service Commission, whereas service candidates are not promoted on the basis of graduation. It is not in dispute that the minimum eligible qualification is only S.S.L.C. in so far as service candidates are concerned. We are satisfied that the State as an employer is

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entitled to fix higher qualification preferential treatment to graduates separately in exercise of its rule-making power. Such a Rule is not unconstitutional. It cannot be laid down as an invariable rule that whenever any classification is made on the basis of variant educational qualifications. Classification on the basis of educational qualification to officers belonging to a cadre for the purpose of promotion to higher cadre is permissible. As pointed out by the Supreme Court, the prescription of eligibility condition or entitlement for consideration for promotion is within the competence of rule making Authority. As rightly pointed out, the preference given to a graduate is not a separate classification, but it is only a preference in the fitment at the top of the select list on the ground of graduation.

23. The other challenge which relates to retrospective effect is also liable to be rejected. The rules in question have been issued under Article 309 of the Constitution of India, which can be given retrospective effect, that there can be preference based on educational qualification, historical factors etc., is also well established and these principles are recognised in various decisions. In the light of the above facts and circumstances and having regard to the historical facts and the decision taken by the Government in 1978, we are of the view that the impugned rules issued with retrospective effect from 1978 are perfectly valid. Further, as rightly pointed out, no vested right have been divested in that no promotions have been cancelled and only the placement in the seniority list would be altered to some extent. This cannot be said to be illegal.

22. Contentions have been urged that the amendment seeks to unsettle settled matter. As rightly pointed out by Mr. R. Muthukumaraswamy, learned Additional Advocate General, and Mr. C. Selvaraju, learned senior counsel, the promotions made already are not affected in any manner. It only alters in the placement or alteration in seniority. Since the rules in question have been issued under Article 309 of the Constitution, the impugned proviso cannot be said to be illegal. As pointed out earlier, though the Tribunal did not even refer to violation of Article 14 of the Constitution of India, we are of the view that there can be preference based on educational qualification, or other relevant criteria. We are satisfied that no promotions given already have been cancelled. We are also satisfied that the Tribunal has committed an error in holding that the provisions of G.O. of 1992 and amendments made by G.O. of 1995 are repugnant to Rule 11 of the Tamil Nadu Ministerial Service Rules, and Rule 5 (f) of Tamil Nadu Revenue Subordinate Service Rules. There is no basis or material to arrive such a conclusion. Among the selected candidates, the directly recruited Assistants found fit to be appointed as Deputy Tahsildar will be placed on the top of the list and this provision

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is no way opposed to Rule 11 of the Tamil Nadu Ministerial Service Rules or Rule 5 (f) of Tamil Nadu Revenue Subordinate Service Rules. A person in the zone of consideration will not be placed at the top merely because he is directly recruited Assistant and he must march over on merit. Therefore, there is no repugnance to Rule 5 (f) of Revenue Subordinate Service Rules. We are also satisfied that the preferential treatment is given not by way of automatic promotion but by merit selection on the basis of graduation. The Tribunal has failed to take note of all the relevant aspects and committed an error in quashing the impugned amendments made under the provisions of G.O. of 1992 and G.O. of 1995.

25. Under these circumstances, the common order passed by the Tribunal dated 26-2-1997 is set aside; consequently, W.P.Nos. 19387/1998, 27173 and 27174/2003, 21663 and 21664/2004 are allowed. In view of our conclusion in the said Writ Petitions, W.P.No. 5303/2005 is liable to be dismissed and accordingly dismissed. In view of the disposal of the writ petitions, the implead petitions are dismissed. Connected Stay petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:-

1. The Secretary to Government,
   Revenue Department,
   Fort St. George, Chennai-9.

2. The Special Commissioner and
   Commissioner for Revenue Administration,
   Chepauk, Chennai-5.

3. The Collector, Collectorate,
   Namakkal, Namakkal District.

4. The District Collector of Coimbatore
   at Coimbatore.

5. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai-104.

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+ 4 ccs to Mrs.G.Devi, Advocate SR No.37900 & 37901

+ 1 cc to Mr.R.Malaichamy, Advocate SR no.37819

+ 3 cc to Government Pleader SR no.37836, 37955 & 37956

+ 2 cc to Mr.R.Singaravelan, Advocate SR No.38120, 38119.

+ 2 cc to M/s S.Mani Advocate SR no.38133, 38132.

Common Order
in W.P.Nos.19387/1998,
27173, 27174/2003, 21663,
21664/2004 and 5303/2005
and WPMP Nos. 3875/2004 etc.

GG(CO)
SR,BP,BG,DV/13.9.2005

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